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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,631	01/21/2004	Margaret Slone	115.0 INP	5025

30480 7590 06/15/2005
 EDWARD S. SHERMAN, ESQ.
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 SUITE 303
 SANTA ROSA, CA 95403

EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,631

Applicant(s)

SLONE, MARGARET

Examiner

Kimberly S. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species I in the reply filed on 05/20/05 is acknowledged.
2. Claims 12-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 05/20/05.

Specification

3. It is noted that the specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification. Such errors include: [0002], line 7, delete "the" prior to "risk"; [0004], line 3: insert "to" following "adjust"; [0019], line 2: there is no Figure 3 as disclosed in the specification at [0019]. These errors are merely cited for illustrative purposes. Appropriate correction is required.
4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification is silent to a kit for constructing an animal shelter.

Drawings

5. The drawings are objected to because there is no cross-section 3B-3B' as stated in [0003], in Figure 3A, there is no leader line from number 310c, Figures 5B and 5A share the

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same detail 520 (each Figure should be separate and inclusive); there is no leader line extending from 502' in Figure 5A. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 110a, 110b and 110d in Figure 2 (these appear to have been mislabeled as 100a, 100b and 100d), cushion 201 and 202, base 511, roof 512, surface 502c. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement

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Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 221, 222, 310, 120, 310, 315, 420, 600c, 600d, 600b-600e. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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9. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Healey, US Patent 5,184,568.

Healey discloses an insulated shell (defined by walls 11, 12 and 16 and considered insulated as all materials have a degree of insulating properties) with at least one portal disposed on a side surface (reference Figure 1), a protective cover (15) disposed over at least the side surface of the shell and a cushioning material (18) over at least a portion of the upward facing surface.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 1-4 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris, US Patent 5,383,422 in view of Keyes et al., US Patent 3,946,944 (Keyes)

Morris discloses a pet shelter comprising a box (10) having at least one flap opening to expose the interior cross-section of the box (as viewed in Figure 1) with an opening formed in one side of the box. However, Morris does not disclose the use of a plurality of rigid foam panels. Keyes teaches within the analogous art of housing structures the use of a plurality of rigid foam panels (44) disposed on the interior surface wherein the panel has an opening therein (at 64) corresponding to an entrance and exit portal for the purpose of providing heat insulation to the housing structure. It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to use the teaching of Keyes' panels with the device of Morris in order to provide for a shelter which would provide heat retention properties thereby allowing for use in cooler climates.

Regarding claim 3, Morris as modified discloses the flap is secured to the adjacent sides to seal the box (at 78, 80).

Regarding claim 4, Morris as modified discloses the flap is secured with tape (78).

Regarding claim 8, Morris as modified discloses the shelter comprising two flaps (32 and 34) including the opening disposed on a different side of the box. It is noted that the claim requires the flaps to be folded down, however this is a method of forming the device which is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Regarding claim 10, Morris as modified discloses the invention as claimed (reference discussion of claim 1 above), as the claim does not positively recite any recitations that differentiates a kit from a constructed structure.

Regarding claims 2 and 9, Morris as modified discloses the claimed invention except that the box is fabricated from cardboard instead of folded plastic based corrugated board. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic corrugated board instead of card board, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Reference Madden et al, US Patent 6,886,495 for known materials in the art.

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12. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris, US Patent 5,383,422 in view of Keyes et al., US Patent 3,946,944 (Keyes) as applied to claim 1 above and further in view of Bradburn et al., US Patent 5,575,239 (Bradburn).

Morris as modified discloses the invention substantially as claimed. However, Morris as modified does not disclose a curtain covering the entrance portal being a sheet of flexible fabric having vertical slits formed therein. Bradburn teaches within the same field of endeavor the use of a curtain covering the entrance and exit port for the purpose of prevent water from entering the housing when raining. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the curtain as taught by Bradburn with the device of Morris as modified in order to prevent rain and other environmental elements from entering the housing.

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morris, US Patent 5,383,422 in view of Keyes et al., US Patent 3,946,944 (Keyes) as applied to claim 1 and further in view of Healey, US Patent 5,184,568.

Morris as modified discloses the invention substantially as claimed. However, Morris as modified does not disclose a cushioning material disposed on the upper surface of the box. Healey teaches within the analogous art of animal housings, the use of a cushioning structure (17) located on the upper surface of a box for the purpose of providing a cushioned place for the animal to rest upon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the cushion as taught by Healey with the device of Morris as modified in order to provide a cushioned area for the animal to rest.

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Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Edelsinki (US 6,758,167), Houser (US 4,803,952), Meruso (BR9804272).

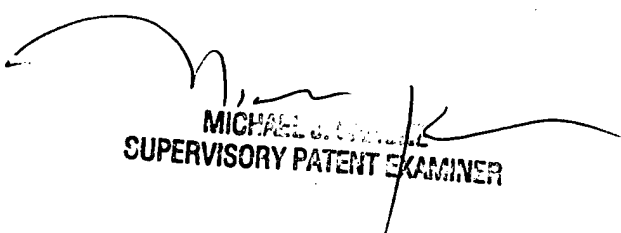
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909.

The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss


MICHAEL G. SMITH
SUPERVISORY PATENT EXAMINER